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HAROLD B. WILLEY

Supreme Court of the United States

OCTOBER TERM 1955

No. 213

UNITED STATES OF AMERICA,

Petitioner,

v.

ETTORE ZUCCA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

COMMENTS OF RESPONDENT ON SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

ORRIN G. JUDD,
Attorney for Defendant.

EARLE K. MOORE,
of Counsel.

Supreme Court of the United States

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UNITED STATES OF AMERICA,

Petitioner,

against

ETTORE ZUCCA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

COMMENTS OF RESPONDENT ON SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

Pursuant to permission given by the Court at the oral argument of the case, respondent submits the following comments on the Supplemental Memorandum for the United States.

The Circular for United States Attorneys Concerning Affidavits in Denaturalization Cases.

Circular No. 3663 of the Department of Justice, which is referred to in the Supplemental Memorandum for the United States, was issued over two years after the passage of the Nationality Act of 1940 (54 Stat. 1137, 1158). Consequently it has no bearing on the issue of reenactment in connection with the 1940 Act, nor on administrative interpretation of the language which had been taken over from the 1906 Act. The section dealing with the affidavit omits the significant early case of *Cohen* v. *United States*, 38

App. D. C. 123 (1912), and the other cases on such affidavits which are cited in Point II of our brief. Moreover, it appears to have been a purely internal memorandum, not available to the public, and not brought to the attention of Congress in connection with the consideration of the Immigration and Nationality Act of 1952.

With respect to the language of Circular No. 3663, and its bearing on the necessity of an affidavit to disclose the factual basis of the complaint against a naturalized citizen, we believe that the portion quoted speaks for itself.

The Number of Denaturalization Proceedings Instituted.

The figures given by the Government with respect to the number of denaturalization proceedings instituted in prior fiscal years include all denaturalization proceedings, whatever the ground for bringing them. We believe that a division between certain major classifications of proceedings may aid the Court in judging the relative burden on the Government of filing affidavits showing good cause, as against the protection which such affidavits afford to the defendant.

The annual reports of the Immigration and Naturalization Service, Department of Justice, for 1952 and 1954, disclose the following figures concerning actual revocations of citizenship:*

	1951	*1952*	*1953*	*1954*
All grounds	279	403	335	165
Establishing permanent residence abroad within 5 years after naturalization	275	384	327	150
Fraud and similar grounds	4	19	8	15

* We have not found any classification of proceedings instituted but over a period of years there appears to be a fairly close correspondence between the totals of proceedings instituted and actual revocations.

The loss of status as a naturalized citizen by establishing permanent residence abroad within five years after naturalization is specially dealt with in Section 340(d) of the 1952 Act (8 U. S. C., Sec. 1451(d)). This section specifically provides that certified statements by diplomatic and consular officers of the United States in the various foreign countries shall be admissible in evidence in all courts in proceedings to revoke the citizenship of naturalized persons who have taken permanent residence abroad. Therefore, the burden of preparing affidavits in such cases is likely to be met by the use of the certificate alone. *United States* v. *Knight*, 291 Fed. 129 (D. C. Mont. 1923); aff'd, 299 Fed. 571 (9th Cir., 1924) was a case where, although there was no affidavit, a consular certificate was submitted (291 Fed. at 131-132), and the opinion dealt with the sufficiency of the certificate to show that the permanent residence abroad began within five years after the date of naturalization. It may be assumed that many of the complaints in cases of permanent residence abroad are served by publication and are undefended, as in the *Knight* case. The Annual Report of the Director of the Administrative Office of the United States Courts for the year 1954 (Table C 8) shows a total of 24 denaturalization trials in all 86 districts.

The 1954 Annual Report for the Immigration and Naturalization Service (p. 44) recites that the number of suits filed in the United States District Courts in 1954 against naturalized persons who were alleged to be Communists at or prior to their naturalization was 31.

Dated: New York, February 1, 1956.

Respectfully submitted,

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Attorney for Respondent.

EARLE K. MOORE,
Of Counsel.